

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4832 of 1998

TO

FIRST APPEAL NO. 4857 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DADUSINH JAGATSINH CHAUHAN

Appearance:

MR UA TRIVEDI, ASSTT. GOVT PLEADER for
Appellants in all First Appeals
MR JV JAPPI, for the claimants in all First Appeals

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 18/12/98

ORAL JUDGEMENT

[Per Panchal, J.]

1. All these appeals are ordered to be admitted. Mr. J.V.Jappi, learned counsel waives service of notice on behalf of the claimants in each appeal. At the joint request of learned counsel for the parties, all the appeals are taken up for final hearing today. This Court has received Record & Proceedings of the Reference Cases pursuant to order passed on December 07, 1998.

2. All these appeals which are filed u/s 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1907, are directed against common judgement and award dated November 29, 1997 rendered by the learned Assistant Judge, Dist. Sabarkantha, at Himmatnagar in Land Reference case Nos. 1544/89, 623/89, 624/89 and Land Reference Case No. 2358/89 to 2380/89. Therefore, we propose to dispose of all these appeals by this common judgement.

3. The Land Acquisition & Rehabilitation Officer, Dharoi Project, Himmatnagar had proposed to the State Government to acquire agricultural lands of village Likhi, Taluka & Dist. Himmatnagar for public purpose of Guhai Jalagar Yojna. On scrutiny of the proposal, the State Government was satisfied that lands comprising 36 survey numbers of village Likhi were needed for the said public purpose. Accordingly, notification u/s 4[1] of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] was issued which was published in Government Gazette On May 25, 1981. The land owners were served with notice u/s 4 of the Act and they had filed their objections against the proposed acquisition. After considering the objections raised by the land owners, the report was forwarded by the Land Acquisition & Rehabilitation Officer, Dharoi Project to the State Government as contemplated by section 5A[2] of the Act. On consideration of the said report, the State Government was satisfied that the lands specified in the notification which was issued u/s 4[1] of the Act were needed for Guhai Jalagar Yojna. Therefore, declaration u/s 6 of the Act was made which was published in Government Gazette on September 26, 1984. The interested persons were thereafter served with notices u/s 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs. 670/- per Are for irrigated lands and Rs. 370/- per Are for non-irrigated lands. Having regard to the materials placed before him, the Land acquisition Officer offered compensation to the claimants at the rate of Rs.150/- per Are for irrigated lands and Rs. 102.50 per Are for non-irrigated lands by award dated March 29, 1985. The claimants were of the

opinion that the offer made by the Land Acquisition Officer was inadequate. Therefore, they did not accept the award and required the Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation by making applications in writing. Accordingly, references were made to the District Court, Himmatnagar which were numbered as Land Reference case No. 1544/88, 623/89, 624/89 and Land Reference Case No. 2358/89 to 2380/89. In reference applications, the claimants pleaded that, having regard to the fertility and potentiality of the lands acquired, the land acquisition officer was not justified in offering compensation to the claimants at the rate of Rs.150/- per Are for irrigated lands and Rs. 102.50 per Are for non-irrigated lands. By filing reference applications, the claimants claimed compensation at the rate of Rs.670/- per Are for irrigated lands and Rs.370/- per Are for non-irrigated lands.

4. On notices being served, the present appellant filed reply at exh.17, controverting the averments made in the reference applications. The main contention which was raised in the reply was that the land acquisition officer had rendered awards with the consent of the claimants and therefore, reference applications were not maintainable. It was also highlighted in the reply that, in view of the fertility of the lands as well as income from the lands, the land acquisition officer was justified in offering compensation to the claimants at the Rate of Rs.150/- per Are for irrigated lands and Rs. 102.50 per Are for non-irrigated lands and therefore, the reference applications should be dismissed.

5. In order to substantiate their claim for enhanced compensation, the claimants examined four witnesses i.e. [1] Pruthvisinh ipsinh at exh.14, [2] Mohammad Ibrahim Vali Mohammad at exh. 65, [3] Majidbhai Ahemadbhai at exh.77 and [4] Mohammad Yunus Mohammad Ajamal at exh. 81. On behalf of the present appellant, three witnesses were examined namely, [1] Somabhai Morarbhai was examined at exh. 92, [2] Motibhai Dharmabhai at exh.100 and [3] Kanaiyalal Pitambardas at exh.133. The witnesses examined on behalf of the claimants stated about the fertility as well as income which claimants were receiving by raising crops in the lands acquired. They also produced previous award of the Reference Court at exh. 169 passed in Land Reference Case No. 1852/89 which indicated that the market value of the lands of village Likhi itself was determined at the rate of Rs. 600/- per Are for irrigated lands and Rs.370/- per Are

for non-irrigated lands as on May 25, 1981 which was the date of publication of Notification u/s 4[1] of the Act in that case. On behalf of the present appellant, valuation reports at exh. 93 to 97 were produced to justify the stand of the appellant that the offer of compensation made by the land acquisition officer was just and proper. Witness Kaniaylal Pitambardas also produced Kabulatnamas at exh. 132 to exh. 155 to establish the claim of the appellant that award were passed by the land acquisition officer with consent of the claimants and therefore, reference applications were not maintainable.

5. On appreciation of evidence, the Reference Court held that the appellant failed to prove that the consent awards were passed and therefore, the reference applications were not maintainable. After taking into consideration exh. 169, which was previous award of the reference court, it was deduced by the reference court that the said previous award was not only comparable, but also related to the lands of this very village and therefore, furnished a good guidance for the purpose of ascertaining market value of the lands acquired in this case. Reference Court has therefore awarded compensation to the claimants at the rate of Rs.600/- per Are for irrigated lands and Rs.370/- per Are for non-irrigated lands by common award November 29, 1997 which has given rise to the present appeals.

6. Mr. U.A. Trivedi, learned Assistant Government Pleader submitted that the evidence of witness Kaniaylal Pitambardas establishes that Kabulatnamas produced at exh. 132 to 155 were executed by the claimants, on the basis of which consent awards were made and therefore, the impugned common award should be set aside. Elaborating the said argument, it was pleaded that the fact that the claimants had voluntarily executed Kabulatnamas is corroborated by the fact that they had accepted the amount of compensation mentioned in the consent awards without protest and therefore, the present appeals should be accepted. What was stressed was that the evidence of witness Kaniaylal Pitambar clinchingly establishes that in his presence, Kabulatnamas were executed by all the claimants and therefore, reference applications should not have been entertained by the reference court. In the alternative, it was contended that the previous award of the reference Court produced at exh.169 should not have been relied upon by the reference Court for the purpose determining market value of the lands acquired in the present case and therefore, the award common impugned in these appeals should be set

aside. Mr. J.V.Jappi, learned counsel appearing for the claimants submitted that, on appreciation of evidence led by the parties, the reference court has recorded a just finding that awards were not rendered by the land acquisition officer with the consent of the claimants and the said finding should not be interfered with by this Court in the present appeals. It was stressed on behalf of the claimants that in the alleged Kabulatnamas, there were no dates nor signature of any one on behalf of the acquiring body and as no evidence was led on behalf of the appellant to indicate that the contents of the Kabulatnamas were explained to the ignorant claimants, the finding reached by the reference court to the effect that there were no consent awards, should be upheld. So far as the quantum of compensation is concerned, it was submitted by the learned counsel for the claimants that the reference court was justified in relying upon exh. 169 which was previous award of the Court relating to the lands of village Likhi and having regard to the facts and circumstances of the case, the appeals should be dismissed.

7. We have heard learned counsel for the parties at length. We have also been taken through the relevant oral as well as documentary evidence by the learned counsel for the parties. In view of the rival submissions advanced at the bar, the first question which falls for the consideration is whether there were consent awards so as to disentitle the claimants to seek references. In order to prove the case that there were consent awards, witness Kaniayalal Pitambardas was examined on behalf of the appellant at exh.130. This witness has stated that, after issuance of notice to the claimants u/s 9 of the Act, they were heard and claimants had agreed to accept the compensation at the rate of fixed by the state Government in resolution dated March 17, 1982. He produced xerox copy of the said resolution at exh.133, according to which, the claimants were to be paid compensation at the rate of Rs.4,100/- per acre including 15% solatium for non-irrigated lands and Rs.6,000/- per acre with 15% solatium for irrigated lands as well as Rs.40/- per acre for waste land. The witness produced so called Kabulatnamas executed by the claimants at exh. 132 to 155 on the basis of which consent awards were passed by the land acquisition officer. The witness claimed that before the consent awards were made by the land acquisition officer, the claimants were paid 75% of the compensation determined by the award and rest of 25% of compensation was paid to the claimants on day on which the awards were made. The witness informed the court that, at the time of accepting the compensation, the

claimants had put their signatures in a register and while accepting the compensation, no objection of any kind was raised by any of the claimants. However, in cross examination, the witness admitted that the High Court had given direction in Special Civil Application No. 1492/84 by order dated April 11, 1984 regarding passing of the award and payment of compensation to the claimants. The witness did not dispute the case of the claimants that the so called Kabulatnamas were not signed by any one on behalf of the acquiring body and that there were no dates in the Kabulatnama. However, the witness denied that he had declared consent awards contrary to the directions issued by the High Court in Special civil Application No. 1492/84.

8. In view of the deposition of this witness, it becomes necessary to refer to order of the High Court dated April 11, 1984 rendered in Special Civil Application No. 1492/84 which is produced on the record of the case at exh. 61. It is as under :-

"SPECIAL CIVIL APPLICATION NO. 1492 OF 1984

MR. R.N.Shah for the petitioner
Mr. Hava for M/s Bhaishanker Kanga &
Girdharlal for the respondents

Coram : B.K. Mehta & R.J.Shah, JJ.
[April 11, 1984]

Oral order [Per B.K. Mehta, J.] :

Mr. R.N.Shah seeks permission to withdraw this petition in light of the following statements made by Mr. Hava on behalf of the respondents.

[1] The State Government shall make land publish notification under section 6 of the Land Acquisition Act within four months from today for the lands of the petitioner and other similarly situated villagers of Likhi within the revenue limits of village Likhi in Himmatnagar taluka of Sabarkantha district more particularly described in the schedule appended to section 4 notification issued in that behalf.

[2] The State Government shall give notices to the persons interested in the said lands so notified to be acquired including the petitioner to lodge their claims for compensation for the

acquisition of the right, title and interest in the lands.

[3] On such claim being preferred by the persons interested, respondent No.1 shall make an interim award granting compensation for the acquisition of the lands so notified at 75 per cent of the rate specified in the resolution of the State Government dated 2/6/1983 and will be paid to the persons entitled to compensation accordingly on or before taking possession.

[4] The interim award as aforesaid shall be without prejudice to the rights and contentions of the owners of the lands so notified to be acquired and they will be entitled to seek reference under section 18 of the Land Acquisition Act, if they are dissatisfied with the final order made in the matter of compensation for the lands and the buildings as may be acquired.

[5] Respondent No.1 shall determine as to what alternative site of land for agricultural purposes as well as for allotment of plots for constructing houses should be allotted to the persons whose lands and houses have been acquired as aforesaid according to the directions given in the Government resolution issued in the Irrigation Department dated 11th June 1979 and also according to the decisions taken and recorded in the minutes of the meeting of the Advisory Committee for Rehabilitation of persons affected by Guhai Irrigation Project held on June 24, 1983 at Himatnagar and presided over by the Additional Collector, Irrigation, North and Central, Gujarat, Gandhinagar.

Permission granted accordingly. Petition stands dismissed as withdrawn. Notice discharged with no orders as to costs.

11/4/1984 [B.K. MEHTA, J.]

[R.J. SHAH, J.]"

9. A bare reading of the above quoted order makes it clear that the Government was required to make and publish declaration u/s 6 of the Act within 4 months of the date of order and notices were to be served to the interested persons so as to entitle them to lodge their claims for compensation for the acquisition of their right, title and interest in the lands. A direction was

given that, on such claim being preferred by the persons interested, the land acquisition and rehabilitation officer of Dharoi Irrigation Project, shall make an interim award granting compensation for the acquisition of the lands so notified at 75% of the rate specified in the resolution of the State Government dated June 02, 1983 and the said compensation shall be paid to the persons entitled to compensation accordingly on or before taking possession. What was clarified by the High Court was that the interim award was to be without prejudice to the rights and contentions of the owners of the lands so notified to be acquired and it was clearly stated in the order that the owners of the lands would be entitled to seek reference u/s 18 of the Land Acquisition Act if they were dissatisfied with the final order made in the matter of compensation for the lands and buildings which were acquired. The last direction given by the High Court required the Land acquisition & rehabilitation officer to determine as to what alternative site of the land for agricultural purposes as well as for allotment of plots for construction of houses should be allotted to the houses whose lands and houses were acquired. Witness Kaniayalal Pitambar in his deposition has clearly stated that, as per the resolution of the Government dated June 2, 1983, the claimants were to be paid compensation at the rate of Rs.6,500/- per acre with 15% solatium for irrigated lands and Rs.4,500/- per acre with 15% solatium for non-irrigated lands. This resolution is also referred to by the High Court while passing order in Special Civil Application No.1492/84. It is relevant to notice that the figure indicated in the Kabulatnamas is Rs.6,000/- per acre with 15% solatium for irrigated lands and Rs.4,100/- per acre with 15% solatium for non-irrigated lands and not Rs.6,500/- per Acre for irrigated lands and Rs.4,500/- for non-irrigated lands. The evidence of witness Kaniayalal Pitambardas does not indicate that any interim award was made by the land acquisition officer in terms of Government Resolution dated June 02, 1983 which is referred to by the High Court in order dated April 11, 1984. The evidence on record does not establish that any Kabulatnamas were executed by the claimants, on the basis of Government Resolution dated June 2, 1983. The alleged Kabulatnamas were executed by the claimants on basis of Government Resolution dated March 17, 1982 which was subsequently superseded by Government itself when another resolution was passed on June 2, 1983. Again before High Court, Government Resolution dated March 17, 1982 was never pressed into service, and directions were invited on the basis of Government Resolution dated June 2, 1983. Thus, the appellant had made its intention clear that the

Government Resolution dated March 17, 1982 was never to be acted upon. Therefore, even if it is assumed that Kabulatnamas were executed, the references are not liable to be rejected because no Kabulatnamas were executed on basis of Government Resolution dated June 2, 1983, but they were purportedly executed on basis of Government Resolution dated March 17, 1982. The resolution of the State Government dated June 02, 1983 is on record and is produced alongwith resolution dated March 17, 1982. In the resolution dated June 02, 1983, there is a specific reference to the earlier resolution dated March 17, 1982. However, while directing the land acquisition officer to make an interim award in terms of resolution of the State Government dated June 02, 1983, right was reserved to the claimants to make reference u/s 18 of the Act specifically, if they were dissatisfied with the final order made in the matter of compensation for the lands and buildings acquired. Under these circumstances, the assertion made by the appellant that in view of the consent awards, the references were not maintainable, cannot be upheld when such a contention is found to be contrary to direction contained in order of the High Court dated April 11, 1984 rendered in Special Civil Application No. 1492/1984. Moreover, as held by the reference court, the evidence on record does not establish that the contents of the Kabulatnamas were explained at least to those illiterate claimants, who had affixed their thumb marks on Kabulatnamas. Admittedly, there are no dates in any of the Kabulatnamas. The Kabulatnamas do not indicate as to on which date they were executed. So also, the place at which those Kabulatnamas are executed is also not mentioned therein. Again, the Kabulatnamas are not signed by any one on behalf of the acquiring body. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that the reference court was justified in holding that there were no consent awards made by the land acquisition officer so as to disentitle the claimants from seeking reference for determination of compensation. On overall view of the matter, the said finding being just, is hereby upheld.

10. The next question which arises for the consideration is whether the reference court was justified in awarding compensation to the claimants at the rate of Rs.600/- per Are for irrigated lands and Rs.370/- per Are for non-irrigated lands. As observed earlier, the claimants produced at exh.169 the previous award of the Court which was rendered with reference to the lands of this very village. In the said case also, the lands were acquired for Guhai Jalagar Yojana.

Notification in the earlier case u/s 4[1] was published on May 25, 1981 on which day, notification u/s 4[1] of the Act was published in respect of the lands which are subject matter of these appeals. It is well settled that award of the court in respect of the similar or adjacent lands and which has become final can be taken into consideration for the purpose of ascertaining market value of the lands acquired in another case. The evidence of the four witnesses examined on behalf of the claimants would indicate that the lands of the same village were acquired by two different notifications, but their fertility, potentiality etc. were similar. In absence of any features which distinguish the two lands which were subject matter of two different notifications, we are of the view that the reference court was justified in relying upon the previous award for the purpose of ascertaining the market value of the lands acquired in the present case. We may state that earlier award of the Reference Court was rendered in group matters and First Appeal No. 2528 of 1994 to First Appeal No. 2634 of 1994 challenging said common Award were dismissed by the Court [Coram : B.N.Kirpal, C.J. [as he then was] and A.N.Divecha, J.] vide order dated January 16, 1995. Thus earlier award has become final. The determination of compensation at the rate of Rs.600/- per Are for irrigated land and Rs.370/- per Are for non-irrigated lands by no measure can be said to be excessive or exorbitant, necessitating interference of the Court in the present appeals. The appeals therefore cannot be allowed and are liable to be dismissed. We may state that except the contention which has been referred to above, no other contentions have been urged on behalf of the appellant in support of the appeals.

11. For the foregoing reasons, all the appeals fail and they are dismissed with no orders as to costs.

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